IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2006

CORAM

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

W.P. No.33116 OF 2003 AND
W.P.M.P.No.11195 of 2006

Raja Sudha Theatre A/C rep. By its Partner
R.Harikrishnan, Dharmapuri 1. … Petitioner

Vs.

1. The Chief Secretary,
The State of Tamil Nadu,
Fort St.George, Chennai 600 009.

2. The Secretary to the Government,
Housing & Urban Development Department,
Fort St.George, Chennai 600 009.

3. The District Collector and the Licencing Authority,
Dharmapuri District, Dharmapuri.

4. The Secretary to the Government,
Home Cinema (II) Department,
Government of Tamil Nadu,
Fort St.George, Chennai 600 009. … Respondents.

Prayer : Petition filed under Article 226 of the Constitution of India Praying for the issuance of a writ of Certiorarified mandamus as stated therein.

For Petitioner : Mr.Patty B.Jagannathan
For Mr.M.Umashankar.

For Respondents: Mr.Sanjay Ramasamy, Govt. Advocate

- - -

O R D E R

By consent of the counsel on either side, the writ petition itself is taken up for final disposal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The writ petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 1.10.2003 in G.O.Ms.No.252 Housing and Urban Development (UD-IV) Department of the 2nd respondent whereby rejecting the request for re-classification of land use from mixed residential use zone into commercial use zone for an extent of 635 meters in S.No.259/1C1, T.S.No.6/1, ward "C", Block No.18, Nethaji Bye-Pass Road, Dharmapuri Municipality/Local Planning Area, for grant of "C" Form licence granting exemption in exercise of the powers u/s.39 of the Tamil Nadu Cinemas (Regulation) Act, 1955, and to quash the same and directing the 3rd Respondent to issue a "C" Form Licence for the petitioner's Theatre called "Rajasudha Theatre A/C".

3. The facts of the case as revealed from the affidavit and the records produced are set out below:

(i) The petitioner a Registered partnership Firm applied for grant of "No Objection Certificate" under the provisions of the Tamil Nadu Cinema (Regulations) Act, 1955 for locating a permanent cinema theatre under the name and style of "Rajasudha Theatre" at survey No. 259/1C1, Nethaji Bye-pass Road, Dharmapuri and after scrutiny the third respondent granted "No Objection Certificate" for a period of three years. The petitioner after complying with all the conditions, constructed the cinema theater as approved by the Superintending Engineer, P.W.D. (Plan and Building), Chennai. The Revenue Divisional Officer after inspection of the theater in his Inspection Report certified that all conditions imposed in the 'No Objection Certificate' have been complied with and recommended for issue of 'C" Form licence.

(ii) A certificate dated 28.3.2002 regarding the structural soundness of the building was given by the Superintending Engineer, P.W.D. Planning and Design Circle, Chennai. The petitioner had also paid the improvement charges of Rs.2,020/- and a further sum of Rs.1,000/- towards storage charges of debris to the Dharmapuri Municipality.

(iii) On 15.3.2002, the petitioner applied for the issue of "C" Form licence to the third respondent within the NOC period. In view of the fact that the site wherein the theater has been constructed lies in a mixed residential zone in the Master Plan approved vide G.O.Ms.No.1521, Housing and Urban Development Department dated 3.12.1991, the third respondent wrote letters dated 6.10.2002 and 30.11.2002 to the fourth respondent for relaxing the Rules in exercise of powers under the provisions of the Tamil Nadu Cinemas (Regulation)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Act, 1955 (hereinafter referred to as the 'Act) and the Tamil Nadu Cinemas (Regulation) Rules, 1957 (hereinafter referred to as the 'Rules). The third respondent enclosed with his letters, a copy of the Dharmapuri District Gazette calling for "No Objection" with regard to the construction of theatre building at the time of issuance of "No Objection Certificate" as required under the Act. The petitioner had invested huge sum of Rs.1.50 crores for the construction of theatre and had obtained huge loan from the State Bank of India. Since there was inaction on the part of the fourth respondent, writ petitions came to be filed and pursuant to the order dated 7.4.2003 passed in W.P.No.10581 of 2003, the petitioner submitted a petition on 30.4.2003, seeking classification of the land in question from mixed residential to commercial zone and for the issue of 'C' Form licence. After rectifying the defects pointed out by the concerned authorities, the petition was forwarded to the second respondent. Since no orders were passed, a Contempt Petition No.641 of 2003 was filed and thereafter the second respondent issued G.O.Ms.No.252 dated 1.10.2003, rejecting the requests of the petitioner and the same is impugned in the above writ petition.

The relevant portion of the impugned proceedings is set out below:

"3. The Director of Town and Country Planning in his letter second read above has recommended to reject the request for re-classification on the following grounds :-

(i) 20 feet front open space has not been provided. This is violation of scheme rule 16(xiii).

(ii) The surroundings of 200 meters are full of Substantial residence zone such as Police quarters and residential plots in the east and in the west all residential buildings.

(iii) The Dharmapuri Municipality/Local Planning Area has resolved not to give re-classification (Resolution No.19 and 128 dated 13.6.2003).

(iv) The theatre was constructed without permission.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Government after careful examination, have decided to accept the recommendation of the Director of Town and Country Planning and accordingly reject the request for re-classification of land use from Mixed residential use zone into commercial use zone for an extent of 635 sq.meters in S.No.259/1C1. T.S.No.6/1, Ward C, Block 18, Nethaji By-Pass Road, Dharmapuri Municipality/Local Planning Area."

(iv) The petitioner contends that the second respondent ought to have granted relaxation, taking into consideration the grant of NOC by the third respondent, the factum of actual construction of the theatre carried out by the petitioner at a cost of Rs.1.50 crores and in the light of the recommendation of the third respondent, in exercise of the powers under Rule 39 of the Tamil Nadu Cinemas (Regulation) Rules 1957. It is also contended by the petitioner that a copy of the report of the Director of Town and Country Planning, Chennai, which has been relied upon by the second respondent was not furnished to the petitioner and similarly the resolution passed by the Local Municipality passed after the filing of the writ petitions was also not furnished to the petitioner and the same have been relied upon by the second respondent to reject the petitioner's petition. It is further contended that the second respondent failed to take into consideration of the fact that the area in which the theatre building is located is not a pure residential area and in all four sides of the theatre within the radius of 200 mtrs commercial buildings have been put up and commercial activities are being carried on. It is also contented by the petitioner that the petitioner's petition for re-classification has been treated as if it is a new petition seeking re-classification of the land overlooking the material fact that the theatre building had already been constructed in accordance with the approved plan issued under the 'Act' and 'Rules' and the petition for exemption and reclassification had been filed invoking Rule 39 of the Rules.

4. (i) A detailed counter affidavit has been filed by the respondents. In the counter affidavit while denying the contentions raised by the petitioner, it is contended that the Dharmapuri Municipality and the Dharmapuri Local Planning Authority, in their Resolution Nos. 19 and 128 dated 13.6.2003 respectively have resolved not to reclassify the petitioner's land from mixed residential zone to commercial use zone in view of certain reasons. Similarly, the Director of Town and Country Planning in his letter

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

No.9049/2003-1/MP3 dated 25.7.2003, had recommended to reject the petitioner's request on the following grounds:

"(i) 20 feet front open space has not been provided. This is violation of scheme rule 16(xiii).

(ii) The surroundings of 200 meters are full of substantial residential developments such as police quarters and residential plots in the east and residential buildings in the west.

(iii) The Dharmapuri Municipality and Local Planning Authority have resolved not to give reclassification in their Resolution Nos.19 and 128 dated 13.6.2003 respectively.

(iv) The theatre was constructed without permission."

(ii) It is further contended that the second respondent after careful examination of the above objections accepted the same and issued the impugned proceedings. It is contended that before commencing the construction, the petitioner ought to have obtained reclassification of land use and planning permission from the Dharmapuri Local Planning Authority as per the provisions contained in the Tamil Nadu Town and Country Planning Act, 1971 and also obtained building licence from the Dharmapuri Municipality, but the petitioner failed to do so. The issue of reclassification of land used is dealt with under the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and 'No Objection Certificate' is issued under the Tamil Nadu Cinemas (Regulation) Act, 1955 and therefore, the obtaining of NOC by the petitioner to set up the theatre cannot in any way obviate the need for classification. Though the Superintending Engineer, PWD, has cleared the building plans, it is incumbent on the part of the petitioner to obtain planning permission from the Dharmapuri Local Planning Authority under the Tamil Nadu Town and Country Planning Act, 1971 and the Tamil Nadu Act V of 1920 before commencing the construction work. The 'No Objection Certificate' obtained by the petitioner cannot be considered as a valid planning permission/building licence under the relevant Statutes.

(iii) It is further contended by the respondents that the second respondent after taking into account the above said reasons and in the light of the objections raised by the Local Body and the Local Planning Authority and the Director of Town and Country Planning, rejected the request of the petitioner seeking reclassification and the impugned proceedings are perfectly valid and the writ petition is devoid of merits.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Heard both sides.

6. The learned counsel for the petitioner submitted that the impugned proceedings is vitiated on the ground of non-application of mind on the part of the second respondent. The learned counsel also submitted that the third respondent District Collector in his proceedings in ROC No. 21881/02(C2) dated 6.10.2002, addressed to the Additional Commissioner (Cinema & Irrigation), Land Administration Department, Chennai-5, has stated that the site over which the theatre building has been constructed lies within the Mixed Residential Zone in the master plan, was missed for consideration while issuing the 'No Objection Certificate' but the second respondent has totally failed to consider the recommendations of the third respondent and the vital facts referred to and highlighted in the letter of the third respondent addressed to the Additional Commissioner (Cinema & Irrigation) in ROC No. 21881/02 (C2) dated 6.10.2002.

7. The learned Government Advocate while reiterating the contentions raised in the counter affidavit contended that the building has been constructed by the petitioner without obtaining reclassification of land use and planning permission from the local body and the local planning authority as per the provisions contained in the Tamil Nadu Town and Country Planning Act 1971. He further contended that the petitioner had not obtained building permission from the Dharmapuri Municipality. The fact of obtaining No Objection Certificate by the petitioner will not obviate the need for seeking reclassification. Though the petitioner had put up the construction as per the approved plan after getting the No Objection Certificate from the Licensing Authority and in case of reclassification being denied the petitioner may be put to financial hardship that may not be a ground for reclassifying the land use.

8. As it will be useful to extract the following provisions which are relevant for considering the contentions raised on either side, the same are extracted below:

"5-A Licensing authority to permit construction and reconstruction of buildings, installation of machinery, etc. for cinematograph exhibitions –

(1) Any person who intends -

(a) to use any place for the exhibition of cinematograph films, or

(b) to use any site for constructing a building thereon for the exhibition of cinematograph films, or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(c) to construct or reconstruct any building for such exhibition, or

(d) to install any machinery in any place where cinematograph exhibitions are proposed to be given,

shall make an application in writing to the licensing authority for permission thereof together with such particulars as may be prescribed, and any provisions contained in the enactments specified below or in the rules made under any of them (or in any other law governing municipal or local bodies in the State or in the rules made under any such enactment or other law.) in so far as it relates to any of the matters specified above shall not apply to any application made under this section :-

(i) The Tamil Nadu Places of Public Resort Act, 1888 (Tamil Nadu Act II of 1888);

(ii) The Madras City Police Act, 1888 (Tamil Nadu Act III of 1888);

(iii) The Madras City Municipal (Corporation) Act, 1919 (Tamil Nadu Act IV of 1919;)

(iv) The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920);

(v) The Tamil Nadu Panchayat Act 1958 (Tamil Nadu Act XXXV of 1958); and

(vi) The Madurai City Municipal Corporation Act, 1971, (Tamil Nadu Act 15 of 1971).

Part II (a) – Approval of location of permanent cinemas.

35. (1) A person who intends to build a permanent cinema building shall furnish the licensing authority with information in respect of items (a) to (f) of section 5 (1) of the Act and other relevant particulars required in Form A. The applications shall be accompanied by a plan of the proposed site drawn to scale and shall clearly indicate the surrounding roads and buildings which exist up to a distance of 200 (metres) of the proposed site, schools, hospitals, temples or (mosques, churches, or other places of public worship) being clearly indicated.

(2) A copy of the application in form 'A' referred to in rule 35 (1) shall be sent to Panchayat / Town Panchayat / Township Committee / Municipal Council / Municipal Corporation concerned which shall forward it within sixty days from the date of receipt of application from the applicant to the licensing authority with a copy of its resolution recording its objections, if any, to the site and to the installation of machinery.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

35-A(1) On receipt of the application, the licensing authority shall scrutinize it to see whether it furnishes all the necessary information.

(2) ……

(3) …….

(4) The licensing authority shall also cause a notice in form A2 to be published in the notice board of the Panchayat Union/Township Committee/Municipal Council/Corporation concerned and in the District Gazette, if any, intimating the fact on receipt of the application, and calling for objections, if any, from the public in regard to non-compliance by the applicant with any of the provisions of the Act or with any of the Rules. All objections shall be filed in writing before the licensing authority within 21 days from the date of publication of the last of these notices. Any objection filed after this period shall be summarily rejected.

36 ((1) After consideration of the application with reference to the matters specified in section 5(1) of the Act, and the objections of the local authority or the Police, the licensing authority shall grant a No Objection Certificate in Form 'B' or may refuse to grant it, within (6 months) from the date of receipt of the application from the applicant. A copy of the order shall be communicated to the applicant and to the persons, if any, who have filed objections, before the licensing authority. If no order is passed by the licensing authority within the period of (6 months), it shall be deemed that the applicant has been granted a No Objection Certificate.)

(The licensing authority shall inform the applicant within two months, from the date of receipt of the application for a No Objection Certificate that his application is under consideration.

[(2) The grant of No Objection certificate is necessary for the construction of a new cinema house and also for converting any building into a cinema house.]

WEB COPY

PART II (b) – APPROVAL OF PLAN OF BUILDING.

37. (1) On receipt of the certificate referred to in rule 36, the applicant shall submit an application for approval of plan of building to be constructed in the approved site.

https://hcservices.ecourts.gov.in/hcservices/

[38-A In case of non-compliance of any rule in respect of a new theatre of licensing authority shall refer the same to the Government, for orders, before the grant of 'C' form licence, with the reasons for the omission to comply with the rule.]

39. An exemption may be granted by the Government from the operation of any particular condition or restriction, provided a strict application of it involves --

(a) heavy structural alteration to the existing premises; and

(b) enormous cost or loss to the licensee.

PART II (C) – APPROVAL OF BUILDING CONSTRUCTED AND ISSUE OF LICENCE.

40. (1) On commencement of construction the applicant shall notify the [Public Works Department Authority concerned] to enable him to issue the certificate of structural soundness under sub-rule (4).

9. An analysis and consideration of the above said provisions contained in the Act and the Rules shows that in respect of grant of no objection certificate, issue of 'C' Form Licence, etc., an elaborate and time bound procedure has been laid down. The Licensing Authority constituted under the Act and Rules had to strictly follow the procedure in respect of the receipt of applications for NOC, 'C' Form Licences etc; their scrutiny; receipt and consideration of objections called for under the provisions and grant of NOC, 'C' Form Licences, etc.,

10. A reading of the heading of Section 5-A which reads as follows:

Licensing Authority to permit construction and reconstruction of buildings, installation of machinery, etc, for Cinematograph Exhibitions shows that the Licencing Authority under the Act has to grant the necessary permission for construction and reconstruction of cinema theaters. As per Section 5-A any person who intends to use any site for constructing a building thereon for exhibition of cinematograph films or to construct or reconstruct any building for such exhibition shall make an application in writing to the Licensing Authority for permission thereof as provided under the Act and the Rules.

11. A reading of Section 5-A (1) (d) shows that the provision contained in the enactment mentioned therein and in the rules made under any of them or in any other law governing municipal or local

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

bodies in the State or in the rules made under any such enactment or other law in so far as it relates to any of the matters specified in Section 5-A (1) of the Act shall not apply to any application made under Section 5-A (1). Originally the Tamil Nadu District Municipalities Act 1920 and the Tamil Nadu Town and Country Planning Act 1971 and other acts were mentioned in Section 5-A (1) (d) of the Act. By Tamil Nadu Act No.11 of 1994, the Tamil Nadu Town and Country Planning Act 1971 was omitted from the above said Section.

12. Part II (a) of the Rules deals with approval of location of permanent cinemas. A person who intends to build a permanent cinema building has to furnish all information as specified in Section 5(1) of the Act and other relevant particulars required in Form 'A' and the application shall be accompanied by a plan of the proposed site drawn to scale and shall clearly indicate the surrounding roads and buildings which exist up to a distance of 200 mtrs of the proposed site, schools, hospitals, temples, or mosques, churches, or other places of public worship should be clearly indicated. As per Rule 35 (2) a copy of the application in Form 'A' shall be sent to the local body concerned which shall forward it within sixty days from the date of receipt of application from the applicant to the Licensing Authority with a copy of its resolution recording its objections, if any, to the site and to the installation of machinery. Likewise, under Rule 35 (3) a copy of the application shall be sent to the Deputy Commissioner of Police (Traffic and Licensing Madras) or the Deputy Superintendent of Police in the muffassal who shall sent back the application with the objections.

13. A reading of Rules 35 (2) and (3) shows that on receipt of the application from the applicant the Licensing Authority shall ensure from the local authority and the Police that they have received copies of the application and ascertain date of their receipt to avoid non-receipt or delay in the receipt of the copies by the authorities concerned. If no reply relating to their objection is received within the time prescribed in Rules 35 (2) and (3,) it shall be presumed by the Licensing Authority that there is no objection. Rule 35-A prescribes the procedure for scrutiny of the application, exhibition of a notice in Form A1 in a Board at the proposed site, publication of a notice in Form A2 in the notice board of the local body and in the District Gazette calling for objections if any from the public in regard to non compliance of the applicant with any of the provisions of the Act or with any of the Rules and the objections shall be filed in writing within 21 days. Any objection filed after the period prescribed in Rule 35-A (4) shall be summarily rejected. Rule 36(1) stipulates that after consideration of the application with reference to the matters specified in Section 5(1) of the Act and the objections of the local authority or the Police, the Licensing Authority shall grant a No Objection Certificate in Form 'B' or may refuse to grant it within six months from the date of receipt of the application and if no order is passed within the said time it shall be deemed that the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

applicant has been granted a No Objection Certificate. The grant of no objection certificate is necessary for construction of a new cinema house under Rule 36 (2) of the Rules. The validity of the no objection certificate is for three years and if within that period the proposed cinema is not put up, a fresh No Objection Certificate should be applied for.

14. Part II (B) of the Rules relate to approval of plan of building. As per Rue 37 (1), an applicant for obtaining the NOC shall submit an application for approval of plan of building to be constructed in the approved site and the said rule prescribes the various particulars, documents and fee to be furnished and paid along with the application. As per the provisions contained in Rule 38, the Licensing Authority has to consult the Public Works Department Authority concerned who shall send his report within one month from the date of receipt of reference from the Licensing Authority. The Licensing Authority shall grant or refuse approval of the plan and building within two weeks after the receipt of the report of the Public Works Department Authority report concerned. The Licensing Authority shall send one copy of the approved plan of the building to the local authority concerned.

15. As per Rule 38-A, in case of non-compliance of any rule in respect of a new theatre the Licensing Authority shall refer the same to the Government for orders before the grant of 'C' Form Licence with the reasons for the omission to be complied with the rule. Rule 39 of the rules empower the Government to grant exemption from the operation of any particular condition or restriction provided a strict application of it involves heavy structural alteration to the existing promises; and enormous cost or loss to the licensee. As per the provisions contained in Rules 40 and 41, the applicant has to obtain the certificates referred to in Rule 40 and submit his application for license in writing to the Licensing Authority and on such receipt within two weeks there from the Licensing Authority shall issue the Form 'C' License.

16. The procedure, the time limit prescribed, the manner of scrutiny and calling for objections and their considerations etc., set out above clearly shows that the Act and the Rules are self-contained. At each and every stage time limits have been prescribed to avoid unnecessary delay so that financial hardships and other problems that may be caused to the applicant due to delay is avoided. In the light of the above said provisions and scheme of the Act, the validity of the impugned proceedings in this writ petition has to be considered.

17. It is relevant to extract the remarks and recommendations of the third respondent contained in the above said proceedings, which reads as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"1. The land under question has already been classified under 'Mixed Residential' zone in the master plan approved vide G.O.No.1521 Housing and Urban Development Department dated 3.12.1991. This fact was missed for consideration while issuing No Objection Certificate.

2. The Act No.11 of 1994 – The Tamil Nadu Cinemas (Regulation) Amendment Act has omitted the exclusion of operation of the Town and Country Planning Act, 1971 in Tamil Nadu Cinemas (Regulation) Act, 1955. Hence the applicant is supposed to satisfy the conditions laid down in section 5A(d) of the Tamil Nadu Cinemas (Regulation) Act, 1955.

3. The applicant has remitted Rs.1,620/- on 16.8.2000 for getting the Building licence from Dharmapuri Municipality."

In the said proceedings, the third respondent has also stated that the theatre has been constructed as per the approved plan and the building satisfies the provisions of the Tamil Nadu Cinema (Regulation) Rules 1957. Third respondent has also referred to the fact that the petitioner has invested huge sums towards the construction of the cinema theatre and has referred to Rule 39 of the Tamil Nadu Cinema (Regulation) Rules 1957 and recommended relaxation and has stated that it will be particularly unfair to raise the issue at this stage after completion of construction, after having given NOC and approved the plans.

18. As stated supra, the third respondent, District Collector, who is the Licensing Authority, in his proceedings dated 06.10.2002 has clearly stated that the fact that the classification of the land in question under mixed residential zone in the master plan was missed for consideration while issuing the no objection certificate. The Licensing Authority, after referring to Tamil Nadu Act No.11 of 1994, has stated that the applicant is supposed to satisfy the conditions laid down in Section 5-A (d) of the Act. The Licensing Authority has very pertinently pointed out that the applicant had remitted the fee for getting the building license from Dharmapuri Municipality and he has also stated that building has been constructed as per the approved plan and has stated that the applicant has invested heavily towards the construction of the cinema theatre and recommended for granting exemption under Rule 39 of the Rules and has stated that it is particularly unfair to raise the issues at this stage after completion of construction, after having given No Objection Certificate and approved the plans.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. The above proceedings had been sent by the Licensing Authority in terms of Rule-38 (A) of the Rules. As stated above Rule 38 (A) provides that in case of non-compliance of any rule in respect of a new theatre the Licensing Authority shall refer the same to the Government for orders before the grant of 'C' Form License with the reasons for the omissions to comply with the Rule. When the Licensing Authority has referred the matter to the Government with the reasons for the omission to comply with the Rule viz., the failure of the applicant to obtain reclassification of the land in question from mixed residential to commercial and had recommended for granting exemption for reasons stated therein, it is incumbent on the part of the second respondent to consider the same by applying his mind independently, of course by taking into consideration the objections raised by the Dharmapuri Municipality and the Director of Town and Country Planning.

20. A reading of the impugned proceedings reveals that the second respondent has miserably failed to apply his mind to the facts of this case, the provisions contained in the Act and the Rules, the recommendation made by the Licensing Authority for granting exemption, which also contains the reasons for making such recommendation and the financial loss and hardship that will be caused to the writ petitioner in case of not granting the exemption sought for under Rule 39 of the Rules. The second respondent has simply repeated the objections raised by the Director of Town and Country Planning without considering the said objections independently by judicious application of mind in the light of the peculiar facts of this case and also in the light of the recommendations made by the third respondent, Licensing Authority and in the light of Rule 38-A and 39 of the Rules and the relevant provisions contained in the Tamil Nadu Town and Country Planning Act 1971. The second respondent has miserably failed to see that the Licensing Authority had approved the site and plan of the building at the time of granting the NOC after following the above said procedures prescribed under the Act and the Rules and neither the Dharmapuri Municipality nor the Deputy Superintendent of Police or the public raised any objections regarding the classification of the land.

21. In the considered view of this Court, when the building has been constructed as per the approved plan, it is not proper on the part of the second respondent to accept the objections of the Director of Town and Country Planning regarding the non-providing of 20 feet front open space and the location of the theatre. A perusal of the plan submitted by the petitioner shows that number of commercial buildings are located in and around the theater building, which has not at all been taken into consideration by the second respondent. As rightly submitted by the learned counsel for the petitioner the objections raised by the local body as well as the Director of Town and Country Planning have not been given to the petitioner to enable him to make the submissions on the same, but

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

have been entirely relied upon and solely on that basis the impugned proceedings have been passed by the second respondent. This will amount to denial of fair opportunity to the petitioner and also it will amount to violation of principles of natural justice.

22. The Licensing Authority in his recommendation has pointed out specifically to the Tamil Nadu Act No.11 of 1994 omitting the Tamil Nadu Town and Country Planning Act from Section 5-A (1) and the reason for the omission to consider the applicability of the said Act at the time of granting the NOC and the financial hardship and difficulties that will be faced by the petitioner if objections are raised at the belated stage. These aspects, which are germane for considering the issue of reclassification of the land use, have not at all been adverted to or considered by the second respondent, which vitiates the impugned proceedings. The recommendations of the third respondent, Licensing Authority, are based on crucial, vital and important factors which led to the granting of NOC to the petitioner. The second respondent has not at all considered the application of the petitioner and the recommendations of the third respondent in the light of Rule 38 A and 39 of the Rules. In fact, the objection of the Director of Town and Country Planning that the theater was constructed without permission is contrary to facts. Since as stated above the theater building has been constructed after obtaining approved plan from the Licensing Authority and totally in accordance with the approval plan as pointed out by the third respondent. This is an error apparent on the face of the record which warrants the interference of this Court. When the Act and the Rules contain elaborate procedures and warrant time bound action on the part of the various authorities concerned before and after the grant of NOC and the issue of 'C' Form Licence, that is an indication that there should not be undue delay on the part of the authorities concerned and the intention is to avoid any financial loss or other problems to the application for 'C' Form licence. This aspect has not been kept-in-mind by the second respondent while considering the application for reclassification. If the local body and the local police had sent their objections to the Licensing Authority at the time of consideration of the application of the petitioner the No Objection Certificate would not have been issued. It is pertinent to point out that the licensing authority as per the Rules shall send one copy of the approved plan of the building to the local authority concerned and in spite of that the local body had remained silent without raising any objections and at this belated stage if they pass the resolution objecting to the grant of classification that resolution should have been considered by the second respondent in the background of non-raising of objections.

23. For the foregoing reasons, this Court is of the considered view that the impugned proceedings are bad in law and liable to be set-aside. Accordingly the impugned proceedings are set-aside and the matter is remitted back to the second respondent for considering the request of the petitioner for reclassification in the light of the observations made herein and after giving an opportunity of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

hearing to the petitioner. The second respondent shall pass orders within a period of eight weeks from the date of receipt of a copy of this Court.

24. With the above directions, the writ petition is disposed of. No costs. Consequently the connected WPMP is closed.

rpa/srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Chief Secretary,
   The State of Tamil Nadu,
   Fort St.George, Chennai 600 009.

2. The Secretary to the Government,
   Housing & Urban Development Department,
   Fort St.George, Chennai 600 009.

3. The District Collector and the Licencing Authority,
   Dharmapuri District, Dharmapuri.

4. The Secretary to the Government,
   Home Cinema (II) Department,
   Government of Tamil Nadu,
   Fort St.George, Chennai 600 009.

+ 1 cc to Mr. M. Umashankar, Advocate SR No.23993

+ 1 cc to Government Pleader SR No.24009

Order in

W.P. No.33116 OF 2003 and
W.P.M.P.No.11195 of 2006

MS(CO)
SR/13.6.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/